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IN THE

Supreme Court of the United States

October Term, 1962

No. 61

INTERNATIONAL ASSOCIATION OF MACHINISTS, AFL-CIO, R. K. DOUD, S. V. CORNSTUBBLE, O. L. BROOM, C. R. CASEY, P. R. DAVIS, and E. E. FUQUA,
Petitioners,

v.

CENTRAL AIRLINES, INC.,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *AMICUS CURIAE*

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BRIEF FOR AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *AMICUS CURIAE*

Preliminary Statement

At issue in the instant case is the jurisdiction of the District Courts of the United States under 28 U. S. C. §§ 1331 and 1337 over suits to enforce awards of boards of adjustment established under collective bargaining agreements between air carriers and the representatives of their employees pursuant to Section 204 of the Railway Labor Act, 49 Stat. 1189, 45 U. S. C. § 184. The Air Line Pilots Association, International, submits this brief as *amicus curiae* with the written consent of the parties as provided in Rule 42 of the Rules of this Court.

Interest of Air Line Pilots Association, International

The Air Line Pilots Association, International, hereinafter called "ALPA", is an unincorporated association organized for the purposes and objects of a labor union. It represents, among others, the professional airline pilots in the employ of all scheduled common carriers by air of the United States, approximately 15,000 pilots. ALPA is the collective bargaining representative for these pilots under the Railway Labor Act, and as such it is a party to collective bargaining agreements with about fifty common carriers by air.

ALPA has been the representing organization for professional pilots of scheduled air carriers in the United States since 1931. Since the passage of Title II of the Railway Labor Act in 1936, ALPA has in every instance negotiated and observed agreements for the establishment of boards of adjustment with the carriers with whom it has engaged in collective bargaining negotiations. It has done so pursuant to the mandate of Section 204 of the Railway Labor Act, 45 U. S. C. § 184. Each one of the collective bargaining agreements to which ALPA is a party contains specific machinery for the investigation and hearing of disputes arising from grievances or from the application or interpretation of the agreement. When such disputes are not resolved by ALPA and the carrier under established procedures, the agreement provides for referral of the dispute to a board of adjustment with provision for final and binding determination utilizing, if need be, a neutral arbitrator.

This dispute settlement machinery has been established by ALPA and the air carriers as required by the Railway Labor Act and has been effective to carry out the purposes of that Act expressed in Section 2, 48 Stat. 1186-1187, 45 U. S. C. Section 151a, as follows:

> "• • • • (1) To avoid any interruption to commerce or to the operation of any carrier engaged

> therein; * * * (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

An important element in the effectiveness of this machinery is the certainty that final awards made pursuant thereto will be binding and enforceable on the parties to the proceeding. By making enforcement of board of adjustment awards dependent on the variant provisions of the laws of the fifty States, the decision of the Court below impairs the certainty of enforcement and thereby reduces the important contribution that the mandatory grievance machinery makes to the carrying out of the express purposes of the Railway Labor Act.

ALPA respectfully submits that the decision of the Court below is an incorrect one that did not give adequate recognition to the rights established and protected by the Railway Labor Act and the duties imposed on air carriers, their employees, and representing organizations under the Act. Nor does the decision below sufficiently take into account that the collective bargaining process and the resulting agreements are of a federal nature, necessarily implementing such rights, duties and mandates.

ARGUMENT

Suits to enforce awards of boards of adjustment established pursuant to the mandate of Section 204 of the Railway Labor Act are cases arising under the laws of the United States over which District Courts have jurisdiction under 28 U. S. C. §§ 1331 and 1337.

Collective bargaining agreements between air carriers and their employees are governed by the provisions of the Railway Labor Act and federal law established by the courts of the United States in accordance with the policies

of that Act. This is apparent when the extent to which the Railway Labor Act controls such collective bargaining agreements is considered.

Such contracts are entered into in order to achieve the federal purposes explicitly set forth in Section 2 of the Act, 45 U. S. C. Section 151a. The duties to engage in negotiations to enter into collective bargaining agreements and to "maintain" them are imposed by Section 2, First and 2, Second of the Railway Labor Act, 45 U. S. C. §§ 152, First, and 152, Second and are enforceable by actions in the federal courts. *Virginian Railway* v. *System Federation, No. 40*, 300 U. S. 515 (1937).

The parties to the negotiations and to the collective bargaining agreements are chosen under safeguards established by Sections 2, Third and 2, Fourth of the Act, 45 U. S. C. §§ 152, Third, and 152, Fourth, and by administrative machinery within the exclusive competence of the National Mediation Board, a federal agency. Railway Labor Act, § 2, Ninth, 45 U. S. C. § 152, Ninth; *Switchmen's Union* v. *NMB*, 320 U. S. 297 (1943); *UNA Chapter, FEIA* v. *NMB*, 294 F. 2d 905 (D. C. Cir. 1961), *cert. denied*, 368 U. S. 956 (1962).

Once these collective bargaining agreements have been entered into, the working conditions prescribed by them may be modified only in accordance with the formalities outlined in the Act. See Railway Labor Act, §§ 2, Seventh; 6; 5, First; 10; 45 U. S. C. §§ 152, Seventh; 156; 155, First; 160; *Order of Railroad Telegraphers* v. *Railway Express Agency*, 321 U. S. 342 (1944); S. Rep. No. 895, 74th Cong., 1st Sess., pp. 1-3 (1935); H. R. Rep. No. 2243, 74th Cong., 2d Sess., pp. 3-4 (1936). Indeed, this formal procedure effectively determines the term of the agreement since neither party to the agreement may change the *status quo* until thirty days after the last step in the procedure. See Railway Labor Act §§ 6; 5, First; 10; 45 U. S. C. §§ 156; 155, First; 160.

The United States District Courts have jurisdiction to enjoin compliance with these mandates of the Act.* See *Railroad Conductors* v. *Pitney*, 326 U. S. 561 (1946); *Virginian Railway* v. *System Federation*, No. 40, 300 U. S. 515 (1937); *Railroad Yardmasters* v. *Pennsylvania R.R.*, 224 F. 2d 226 (3rd Cir. 1955); *Railway Clerks* v. *Atlantic Coast Line R.R.*, 201 F. 2d 36 (4th Cir. 1953), *cert. denied*, 345 U. S. 992 (1953); *American Airlines* v. *ALPA*, 169 F. Supp. 777 (S. D. N. Y. 1958). In addition, wilful violation of certain provisions of the Act, including Section 2, Seventh, 45 U. S. C. § 152, Seventh, which prohibits a carrier from changing working conditions of its employees except in the manner prescribed in the Act, is a federal criminal offense. See Railway Labor Act, § 2, Tenth, 45 U. S. C. § 152, Tenth.

Contrary to the statement in the decision below

> "• • • that Congress did not choose the direct course of providing that federal law, statutory or decisional, should control the substantive features of labor contracts in the airlines industry • • •." (295 F. 2d at p. 212),

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* The District Courts are not divested of jurisdiction to enforce the mandates of the Railway Labor Act when a violation of those mandates by a carrier also constitutes a breach of the carrier's obligation under a collective bargaining agreement. See *Railroad Conductors* v. *Pitney*, 326 U. S. 561 (1946); dissenting opinion of Judge Clark in *Baltimore and Ohio R.R.* v. *United Railroad Workers*, 271 F. 2d 87, 92-93 (2d Cir. 1959), *judgment vacated and remanded*, 364 U. S. 278 (1960). The power of a District Court to enjoin a unilateral change in working conditions, as a condition of enjoining a strike pending a decision by an adjustment board, was upheld by this Court in *Locomotive Engineers* v. *M-K-T Railroad*, 363 U. S. 528 (1960). The power of a federal court to enjoin a carrier from effectuating a change in working conditions during the pendency of a dispute before an adjustment board in an independent suit by a union was expressly left open by this Court in the *M-K-T case*. See 363 U. S. at p. 531, n. 3.

the Act and decisions of this Court clearly show that the very contents of these collective bargaining agreements are subject to federal law. Thus, agreements entered into pursuant to conduct inconsistent with the duties imposed by the Act on collective bargaining representatives are invalid and compliance with them is enjoinable by a District Court of the United States in a suit in which the jurisdiction of the court is based on 28 U. S. C. § 1337. See *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U. S. 210 (1944), in which the Court said:

> "We also hold that the right asserted by petitioner which is derived from the duty imposed by the Railway Labor Act on the Brotherhood, as bargaining representative, is a federal right implied from the statute and the policy which it has adopted. It is the federal statute which condemns as unlawful the Brotherhood's conduct. 'The extent and nature of the legal consequences of this condemnation, though left by the statute to judicial determination, are nevertheless to be derived from it and the federal policy which it has adopted.' *Deitrick* v. *Greaney*, 309 U. S. 190, 200-201; *Board of County Commissioners* v. *United States*, 308 U. S. 343; *Sola Electric Co.* v. *Jefferson Co.*, 317 U. S. 173, 176-7; cf. *Clearfield Trust Co.* v. *United States*, 318 U. S. 363. The case is therefore one arising under a law regulating commerce of which the federal courts are given jurisdiction by 28 U. S. C. § 41(8), Judicial Code § 24(8); *Mulford* v. *Smith*, 307 U. S. 38, 46; *Peyton* v. *Railway Express Agency*, 316 U. S. 350; cf. *Illinois Steel Co.* v. *B. & O. R. Co.*, 320 U. S. 508, 510-511." 323 U. S. at p. 213.

The contents of collective bargaining agreements entered into between air carriers and representatives of their employees are also explicitly determined by the provisions of the Railway Labor Act. Thus, Section 2, Eleventh of the Act provides that such agreements may contain certain provisions but may not contain others. See 45 U.S.C. § 152,

Eleventh. In the railroad industry, the Act provides that collective bargaining agreements between rail carriers and representatives of their employees may provide for the establishment of boards of adjustment. See Railway Labor Act § 3, Second, 45 U.S.C. § 153, Second. In the air transport industry, the Act *requires* that the collective bargaining agreements between carriers and the representatives of their employees provide for such boards of adjustment. It states:

> "It shall be the duty of every carrier and of its employees, acting through their representatives, selected in accordance with the provisions of this title, to establish a board of adjustment of jurisdiction not exceeeding the jurisdiction which may be lawfully exercised by system, group, or regional boards of adjustment, under the authority of Section 3, Title I, of this Act." Railway Labor Act, § 204, 49 Stat. 1189, 45 U.S.C. § 184.

That this provision is mandatory is apparent from its language and from its legislative history. The Bill that was enacted as Title II of the Railway Labor Act, S. 2496, 74th Cong., First Sess., as originally introduced did not require the establishment of boards of adjustment. Section 204 of that Bill made the establishment of such boards optional on the part of the air carriers and the representatives of their employees in language the followed Section 3, Second of the Railway Labor Act, 45 U.S.C. § 153, Second. See *Hearings before a Subcommittee of the Senate Committee on Interstate Commerce on S. 2496, a Bill to amend the Railway Labor Act*, 74th Cong. First Sess., p. 1-2 (1935). Under Section 203 of S. 2496 as introduced, jurisdiction over grievances was to be vested in the National Mediation Board. See *Hearings, supra*, p. 1.

At the Hearings before the Senate Committee on Interstate Commerce, Mr. George A. Cook, then Secretary of the National Mediation Board, objected to Section 203 of the Bill as introduced on the ground that it

> "* * * appears to place upon the National Mediation Board the burden of adjusting by mediation the individual grievances of employees of carriers by air. This is likely to produce such a vast volume of work as to interfere seriously with the capacity of the National Mediation Board to fulfill the functions placed upon it by the present Railway Labor Act." See *Hearings, supra,* p. 11.

Mr. Cook proposed that Sections 203 and 204 of the Bill as originally introduced be amended. His proposal was accepted, and the Bill as passed contained the language suggested by him. See *Hearings, supra,* p. 11. Mr. Cook was questioned by Senator Black as to whether the substitute language was

> "* * * drawn in such a way as to give exactly the same range to the men engaged in air transport as would be invoked by men engaged in railroad employment?"

He replied, "I understand so." Senator Black then said, "The object is not to impair the effectiveness of the bill but simply to make it apply with uniformity to both classes of employees, as I understand," and Mr. Cook affirmed, "That is correct." See *Hearings, supra,* p. 12.

Title II of the Railway Labor Act would not be giving "* * * exactly the same range to the men engaged in air transport as would be invoked by men engaged in railroad employment" if it did not require the establishment of boards of adjustment for the compulsory arbitration of disputes arising out of grievances or out of the interpretation or application of the collective bargaining agreement and provide a federal forum in which adjustment board awards could be enforced. See *Union Pacific R. R.* v. *Price,* 360 U. S. 601, 609-612 (1959); *Railroad Trainmen* v. *Chicago River R. R.,* 353 U. S. 30, 34-39 (1957). Indeed, that "(n)ational policy, as expressed in the statute, requires that airlines and unions set up a procedure for settling grievances * * *" was accepted in the prevailing opinion

in the Court below. See 295 F.2d at p. 215; see also *Air Line Pilots Association* v. *Southern Airways, Inc.*, 49 LRRM 3145 (M.D. Tenn. 1962), *appeals docketed*, Nos. 15021, 15022, 6th Cir., May 17, 1962; *Air Line Pilots Association* v. *Southern Airways, Inc.*, Civil Aeronautics Board Docket No. 11654, Decision and Order No. E-18560 (July 5, 1962), *appeals docketed*, D. C. Cir. and 5th Cir., July 6, 1962.

Furthermore, it is clear that a holding that the Railway Labor Act requires that grievances of employees be heard through the machinery set up in Section 204 culminating in a board of adjustment accords with the overall policy embraced by Congress when it extended the provisions of the Railway Labor Act to carriers by air and their employees. This policy was to assure the safety of the traveling public by protecting pilots and other employees by means of the mandatory grievance machinery and the other provisions of the Railway Labor Act. The House Report recommending passage of the Bill that brought air carriers and their employees under the coverage of the Railway Labor Act stated:

> "During the past year there have been many terrible accidents on the air lines resulting in considerable loss of life. The greatest step that could possibly be taken to give greater safety to the air-traveling public would be to enact proper mediation legislation. It would insure against the dangers of pilot and copilot fatigue. It would, more than any other thing that could be done, assure against improper maintenance and inspection of equipment between flights. It will, to the greatest possible degree, assure a living wage to all airworkers and prevent sweatshop conditions. It does away with company unions and their dominance and gives the pilots and all other airworkers a clear, direct voice regarding the problems of piloting, maintenance, and inspection direct to their employer and to the regulatory agencies of the Government. This alone is the greatest possible single contribution that could be made in the interest of safety on the air lines of our

> country." See H. R. REP. No. 2243, 74th Cong., 2d Sess. p. 2-3 (1936).

Clearly, without a right to challenge an employer's disciplinary action through the grievance machinery established under the Act culminating in a board of adjustment and in the judicially enforceable decision of a neutral, pilots and other air workers would be in no position to exercise "a clear, direct voice regarding the problems of piloting, maintenance, and inspection * * *." It is therefore clear that Section 204 of the Railway Labor Act requires that grievances of employees be subject to review by boards of adjustment with the ultimate power to decide lodged in a neutral arbitrator whose decision is enforceable by the courts.

While the Court below recognized that the statute requires the establishment of adjustment boards it took the position that such boards were merely creatures of contract and that their jurisdiction was fixed by contract between the parties. The Court said:

> "* * * it is clear, therefore, that although the statute requires the parties to establish a board, without a contract there would be no board. It is also clear that the parties must look to the contract for the composition, procedures and jurisdiction (with Section 153) of an airline system board of adjustment." See 295 F. 2d at p. 211.

This view of the Court below is an erroneous one. The duty to establish a board of adjustment, like other duties imposed on carriers and unions under the Railway Labor Act, is enforceable by the exercise of the equity powers of the federal courts. See *Virginian Ry.* v. *System Federation No. 40*, 300 U. S. 515 (1937); *Texas & N. O. R.R.* v. *Clerks*, 281 U. S. 548 (1930); *Steele* v. *Louisville & Nashville R.R.*, 323 U. S. 192 (1944); *Railroad Trainmen* v. *Chicago River R.R.*, 353 U. S. 30 (1957).

And the jurisdiction of the boards of adjustment established pursuant to the mandate of Section 204 of the Act is

expressly stated in that section and in other sections of the Act. These boards are to have jurisdiction over

> "The disputes between an employee or group of employees and a carrier or carriers by air growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of the approval of this Act before the National Labor Relations Board. * * * " 49 Stat. 1189, 45 U. S. C. § 184.

It could not be otherwise if the purpose of Congress to enable air workers to contribute to the safety of the air traveling public by protecting them from unwarranted discipline was to be achieved. *See also* Railway Labor Act, § 2 ("to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements. * * * "); § 2, First ("all disputes, whether arising out of the application of such agreements or otherwise. * * * "); § 2, Sixth ("dispute * * * arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. * * * "); § 3, First (i) ("the disputes * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. * * * ").

And this Court has recognized that grievances subject to adjustment under the Railway Labor Act may arise independently of the collective bargaining agreement. It said:

> " * * * It is to be doubted that Congress by the generally inclusive language used concerning grievances intended, for instance, to give the collective agent exclusive power to settle a grievance arising independently of the collective agreement, affecting only non union men to whose claim the union and the majority were hostile." See *Elgin, J. & E. Railway* v. *Burley*, 325 U. S. 711, 736, n. 34 (1945), *adhered to on rehearing*, 327 U. S. 661 (1946).

It is, therefore, clear that collective bargaining agreements between air carriers and the representatives of their employees and, in particular, those portions of the agreements providing for boards of adjustment for the determination of disputes arising out of grievances or out of the interpretation or application of the agreements are governed by the provisions of federal law. That the federal interest in collective bargaining between the air carriers and their employees was before Congress at the time it enacted Title II of the Railway Labor Act is evident from a report submitted to Congress by the then Federal Coordinator of Transportation, Joseph B. Eastman. The Conclusions and Recommendations of this report stated:

> "Beyond minimum safety standards, it is appropriate that matters involving rates of pay, hours, working conditions and grievances in the transportation industries be adjusted, so far as possible, by the orderly process of collective bargaining. This principle is widely recognized, particularly in industries strongly affected with a public interest. Air transportation presents no exception. The air lines have become an important part of the country's reliance for rapid transportation, whether of persons, mail, or valuable property. The public is interested in maintaining unhindered the flow of interstate commerce and the carriage of mail by air, and therefore in avoiding strikes, industrial disturbances, and friction between employer and employee. If wages and working conditions are matters primarily to be determined by agreement, the Government's obligation is to provide the best possible machinery for reaching and maintaining such agreements, as well as to mobilize the necessary factual data to facilitate the making of such agreements.
>
> • • •
>
> "The air-transport industry is so charged with responsibility to the public that it is important that every legal safeguard recommended by long experience in labor relations should be adopted. The value of the Railway Labor Act as a means for promoting wholesome labor relations is attested by the experi-

> ence under the act. Extension of the facilities of the Railway Labor Act to the air lines and their employees, as proposed in a bill passed by the Senate and now pending in the House of Representatives (S. 2496, 74th Cong.), is highly desirable." See *Hours, Wages and Working Conditions in Scheduled Air Transportation*, S. Doc. No. 208, 74th Cong., 2d Sess. pp. 81-82 (1936).

The compelling policy reasons for federal law governing the enforcement of collective bargaining agreements were recently stated by this Court in *Local 174, I. B. T.* v. *Lucas Flour Co.*, 369 U. S. 95, 103-104 (1962). These reasons apply with even greater force to collective bargaining agreements of air carriers.

The majority decision in the Court below recognized that

> "• • • [i]f any industry should have ready access to federal courts because of the interstate character of its business, it is the airline industry • • •." 295 F. 2d at p. 220.

But the majority believed that Congress had not provided for federal District Court jurisdiction over suits to enforce airline board of adjustment awards. It is true that there is no provision giving the District Courts jurisdiction specifically over such suits, but a specific provision is not required if the suit is one arising under the laws of the United States within 28 U. S. C. §§ 1331 and 1337.

It is respectfully submitted that suits to enforce airline board of adjustment awards are suits arising under the laws of the United States within 28 U. S. C. §§ 1331 and 1337. As has been shown above, it was the intent of Congress that Sections 203 and 204 of the Railway Labor Act as adopted, 45 U. S. C. §§ 183 and 184, should

> "not impair the effectiveness of the bill but simply make it apply with uniformity to both classes of employees • • •"

i.e., those engaged in air transport and those engaged in rail transport, *supra*, page 8. "Uniformity" was achieved and the "effectiveness" of Section 204 was insured by providing a federal forum for the enforcement of adjustment board awards.

Here, as in *Tunstall* v. *Brotherhood of Locomotive Firemen*, 323 U. S. 210 (1944), the federal nature of the collective bargaining agreement between air carriers and representatives of their employees and the extent to which this collective bargaining agreement is the result of the duties imposed on such carriers and their employees by the Railway Labor Act, make suits to enforce board of adjustment awards cases arising under the laws of the United States within 28 U. S. C. §§ 1331 and 1337. Indeed, such suits are based on a duty on "all carriers, their officers, agents and employees" expressed in Section 2, First of the Railway Labor Act, 45 U. S. C. Section 152, First. That section imposes the duty on carriers, including air carriers, and their employees,

> "to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof." *

In every case, a refusal to comply with the award of a board of adjustment established pursuant to the mandates of Section 204 of the Act is a failure "to exert every reasonable effort to * * * maintain agreements * * * and

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* It should be noted that this language is much broader than the language in Sections 8(a)(5) and 8(b)(3) of the National Labor Relations Act which makes it an unfair labor practice for employers and labor organizations "to refuse to bargain collectively * * *." See 29 U. S. C. §§ 158(a)(5) and 158(b)(3).

to settle all disputes * * * " Thus, the power of the federal District Courts to enforce board of adjustment awards is only one aspect of the power of those courts to enforce the duties imposed by Section 2, First of the Railway Labor Act, 45 U. S. C. § 152, First. That, the federal District Courts have jurisdiction over suits to enforce these obligations is well settled. See cases cited on pages 5 and 10, *supra; Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 7180*, 69th Cong., 1st Sess. pages 84-85 (1926).

CONCLUSION

The judgment below should be reversed and the case remanded to the District Court.

Respectfully submitted,

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